



Texas Department of Insurance

Division of Workers' Compensation

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address:

Respondent Name:

UNIVERSITY OF TEXAS SYSTEM

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

MFDR Tracking Number:

M4-08-6102-01

Carrier's Austin Representative Box

Box Number 46

MDFR Received Date

AUGUST 9, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Regarding the hip surgery on Aug. 11, 2006: Dr. Mark Maffett is my treating physician. When it was discovered that I had a labral tear of an unusual nature as a result of the incident on March 16, 2005, he referred me to Dr. Marc Philippon in Vail, Colorado. There are only 3 doctors in the United States that do the procedure for this particular type of tear. He was the closest and the most qualified since he was the one who invented the procedure. Therefore, the claim that a doctor in Dallas could have done the surgery is ludicrous. At that time, my ability to walk and work became very limited. Yes, I had been released to work, but I was barely able to make it there each day and unable to take narcotics for pain or I could not treat my own patients. Hence, Dr. Maffett recommended the surgery immediately. I only missed one week of work after surgery. I am a single mother who is currently self-employed as a psychotherapist. I had no choice but to work to keep my financial obligations, regardless of pain or immobility. So WCI's note about my ability to work not being compromised was wrong. This surgery was urgent as I would not have been able to work after that date. I had difficulty walking into the doctor's office. I was trying to be responsible and get the help I needed so that the taxpayer would not have to support me. During this time, WCI had appealed the decision that the hip was compensable and the decision was still at the panel of appeals. Pre-authorization was attempted by all providers. WCI did not respond to the requests or return the phone calls. This was out of my hands at the time. I had no choice but to pay the deposit for the surgery and allow the providers to use my personal insurance. The panel made the decision compensable. Several times of the next few months, providers attempted again to contract WCI to get payment and were told that the decision was still in dispute, as you will see on the enclosed EOB dated Jan. 2007. This decision was not being disputed any longer. I feel that WCI is required to pay all expenses for the surgery and my subsequent physical therapy and medical care. This has been decided and it should be carried out..."

Amount in Dispute: \$6,090.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The patient opted to go out of state and utilize her group health insurance for hip surgery. TDI DWC preauthorization rules were not followed. The health care providers who performed the services were not licensed [sic] in Texas. Physicians [sic] have opined that there were many qualified orthopedic surgeons available to the claimant, as she lives a short distance from the Texas Medical Center. Therefore, the surgery and all subsequent treatment that was a result of the surgery have not been paid by the carrier. These are charges that the claimant paid out of pocket. With the request for MDR, no carrier EOB's were submitted. There is no record of having received a request for reimbursement for \$100 co-pay, making this an invalid request per MDR rules...There is no record of having received a request for reimbursement for \$5000.00 surgery deposit, making this an invalid request per MDR rules..."

Response Submitted by: UT Systems, PO Box 20196, Houston, TX 77225

Affidavit of Mary Thomas, dated June 6, 2008: "...I am employed as a Senior Claims Analyst with the University of Texas System in Houston, Texas. In this role I am the adjuster of the workers compensation claim of Gwendolyn Brehm, date of injury March 16, 2005. On June 19, 2007, we received a request for reimbursement for medical expenses from Ms. Brehm. This request included the following receipts:

1. Christus St. John Hospital, \$55.37
2. Kroger, \$47.80
3. United States Postal Service, \$21.49
4. Advantage Rental-A-Car, \$459.32
5. Bergamos Spa Retreat, \$664.04
6. Eagle Valley Pharmacy at Vail, \$91.07
7. CVS Pharmacy, \$25.00
8. The Rockfort Shop, \$64.94
9. Sitzmark at Vail, \$549.00
10. Conoco, \$5.96
11. Safeway, \$32.18
12. Valero, \$22.01

All of the above listed receipts were audited by our Utilization Review Agent (URA) and denied for the reasons outlined on each applicable Explanation of Benefits (EOB). The request dated June 15, 2007, did not include a request for reimbursement for \$5,000.00 for her payment to Marc Joseph Phillippon on October 23, 2006, nor did it include a request for reimbursement for \$100.00 for her payment to Vail Valley Surgery Center, LLC on August 9, 2006. At no time did University of Texas System receive a request for reimbursement for these services from Ms. Brehm. If the University of Texas System had received either of these requests for reimbursement, I, as the responsible adjuster would have ensured that the receipts were submitted to our RUA so that a timely accurate audit could be performed and an EOB mailed to the claimant.

Response Submitted by: Mary Thomas, University of Texas System, Houston, TX

Letter from WCI Manager Javier Garza to TDI Complaint Resolution & Customer Service dated March 30, 2007:

"...Dr. Maffet referred Ms. Brehm to March Phillippon, M.D. in Vail, Colorado for an evaluation on 8/9/06 with subsequent right hip surgery. Dr. Phillippon diagnosed right hip femoral acetabular impingement and performed on 8/11/06 a right hip arthroscopy, osteoplasty, rim trimming and labral

reattachment, debridement of the lagamentum teres and labral debridement. **Bill Audit Review:** Dr. Philippon's bills for 8/9/06 and 11/13/06 office visits, as well as, the surgical and anesthesia charges for the 8/11/06 procedure were denied payment for the following reasons:

1. Dr. Philippon is not licensed in Texas and is not on the Approvaed Doctor's List to treat Texas Workers' Compensation claimants.
2. 2. Dr. Philippon did not obtain pre-authorization for the procedure as required by DWC Rule 134.600(p)(1).
3. Dr. Philippon submitted his bills to UT System on 3/8/07 which is considered untimely per the DWC Rule 133.20(b) requiring that a bill be submitted within 95 days of the date of service...

In conclusion, Dr. Maffet indicated in a letter dated 12/11/06 that there was no physician in Houston or Texas that could perform the surgery that Ms Brehm required. Dr. Maffett also noted that the claimant needed the surgery done an an 'urgent bases' since she was 'continuing to decrease her functional capacity'. Since Ms. Brehm was able to work despite her reported symptoms, it does not appear that her functional capacity was limited to the degree to need 'urgent' surgical intervention. Furthermore, MBMS Medical Advisory, Dr. Melissa Tonn, refuted Dr. Maffet's allegation that the procedure could not be performed in Texas. She noted that hip arthroscopy is performed by a number of physicians in Dallas, including doctors at Carrell Clinic. Therefore, it appears Ms. Brehm's allegation that her work injury related medical bills were not properly paid by the University of Texas System does not have merit since she chose to seek treatment outside the Texas Workers' Compensation System Approved Doctors List, did not request an exception to be treated by a physician not on the ADL, ignored applicable DWC Rules requiring pre-authorization of her in-patient hospitalization and post-operative physical therapy, and pursued treatment through her private health insurance."

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 21, 2006 August 1, 2006 August 5, 2006	Untimely submitted Out-of-Pocket expenses for prescription medications.	\$44.92	0.00
August 9, 2006 February 22, 2007	Co-Pays for surgeon and surgery center Additional payment to surgeon	\$5,100.00 \$ 814.65	\$0.00 \$0.00
August 9, 2006 Austin 10, 2006 August 16, 2006 January 8, 2007	Out-of-Pocket expenses for prescription medications.	\$130.43	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for injured employees to pursue a medical fee dispute.
2. 28 Texas Administrative Code §133.270 sets out the procedures for injured employees to submit workers' compensation out-of-pocket expenses to the insurance carrier for reimbursement.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated June 19, 2007, July 6, 2007,

- 50 – Non-covered services because this is not deemed a medical necessity by the payer.

- 001 – These services are not reimbursable under the worker's compensation program.
- 100 – Payment made to patient/insured/responsible party.

Findings

1. In accordance with 28 Texas Administrative Code §133.307(c)(1)(A), requests for medical dispute resolution (MDR) shall be filed in the form and manner prescribed by the Division. Requestors shall file two legible copies of the request with the Division. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request. A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the dates of service in dispute. Dates of service July 21, 2005, August 1, 2006 and August 5, 2006 were submitted untimely and cannot be reviewed. All other dates of services from August 9, 2006 through February 2, 2007 were filed timely and will be reviewed in accordance with the Texas Labor Code and Division rules.

In accordance with 28 Texas Administrative Code §133.307(c)(3)(D) An employee who has paid for health care may request medical fee dispute resolution of a refund or reimbursement request that has been denied. The employee's dispute request shall be sent to the MDR Section by mail service, personal delivery or facsimile and shall include a copy of the carrier's or health care provider's denial of reimbursement or refund relevant to the dispute, or, if no denial was received, convincing evidence of the employee's attempt to obtain reimbursement or refund from the carrier or health care provider. The injured employee submitted a copy of a signed United States Postal Service domestic return receipt showing University of Texas System received the employees request for reimbursement of out of pocket expenses. The respondent submitted a signed and notarized affidavit from the adjustor stating that the request dated June 15, 2007 did not include proof of payment by the injured employee for reimbursement for the Pre-Surgery Deposit made to Steadman Hawkins Clinic-Vail made on August 9, 2006 in the amount of \$5,000.00 and the Co-Pay made to the Vail Valley Surgery Center in the amount of \$100.00. Therefore, reimbursement is not recommended.

The injured employee made an additional payment to Steadman Hawkins Clinic-Vail on February 22, 2007 in the amount of \$814.65; however, there were no EOBs submitted by either party supporting that this out-of-pocket expense was submitted to the insurance carrier for reimbursement. Therefore, reimbursement is not recommended.

2. The requestor filed a dispute with the Medical Fee Dispute Resolution section at the Division on August 9, 2007. According to 28 Texas Administrative Code §133.305(a)(4), a medical fee dispute is a dispute that involves an amount of payment for non-network health care rendered to an injured employee (employee) for health care determined to be medically necessary and appropriate for treatment of that employee's compensable injury. 28 Texas Administrative Code §133.305(b) goes on to state that "If a dispute regarding compensability, extent of injury, liability, or medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding compensability, extent of injury, liability or medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and 408.021." 28 Texas Administrative Code §133.307(e)(3)(G) requires that if the request contains an unresolved adverse determination of medical necessity, the Division shall notify the parties of the review requirements pursuant to §133.308 of this subchapter (relating to MDR by Independent Review Organizations) and will dismiss the request in accordance with the process outlined in §133.305 of this subchapter (relating to MDR--General). The appropriate dispute process for unresolved issues of medical necessity requires the filing of an Independent Review Organization (IRO) pursuant to 28 Texas Administrative Code §133.308 prior to requesting medical fee dispute resolution. No documentation was submitted to support that the issue(s) of medical necessity have been resolved as of the undersigned date.
3. The requestor has failed to support that the services are eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307. .

Conclusion

For the reasons stated above, the requestor has failed to establish that the respondent's denial of payment reasons concerning medical necessity have been resolved through the required dispute resolution process as set forth in Texas Labor Code Chapter 413 prior to the submission of a medical fee dispute for the same services. Therefore, medical fee dispute resolution staff has no authority to consider and/or order any payment in this medical fee dispute. As a result, no amount is ordered.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____	_____	January 10, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.